

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION V
UNITED STATES OF AMERICA

U. S. ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
vs.)
)
GARY DEVELOPMENT COMPANY, INC.,)
)
Respondent.)

US EPA RECORDS CENTER REGION 5



456027

CAUSE NO. 86 R-45

REQUEST FOR HEARING AND ANSWER
AND RESPONSIVE PLEADING TO COMPLAINT AND COMPLIANCE ORDER

Comes now Gary Development Company, Inc. ("Gary"), by counsel, and for its Request for Hearing and Answer and Responsive Pleading to the Complaint and Compliance Order issued by Region V of the United States Environmental Protection Agency on May 30, 1986, states:

1. Gary denies the jurisdictional summary set forth at page 2 of the Complaint, objects to the Region V alleged attempt to enforce regulations of the state of Indiana, and disputes both the subject matter and personal jurisdiction of Region V.

2. Gary denies the allegations set forth in Finding No. 1, but admits that it is an Indiana corporation whose principal place of business is located at 479 North Cline Avenue, Gary, Indiana 46406, whereat Gary conducts a sanitary landfill for the disposal of municipal and commercial refuse.

3. Gary either denies or is without specific knowledge, and thus denies, the statements set forth as "Findings" in Findings No. 2, 3, 4 and 5. Furthermore, these "Findings" are in

actuality conclusions of law, being interpretations of statutes and/or regulations; and said statutes and regulations are not applicable to Gary.

4. Gary is presently without sufficient knowledge to answer the material allegations set forth in Finding No. 6, and thus denies them. However, because Gary was not disposing of hazardous wastes prior to August 18, 1980, no Section 3010(a) notice was required.

5. Gary denies the allegations set forth in Finding No. 7, except it admits that on November 18, 1980, it filed a Part A application, which application Gary was advised was necessary for it to dispose of hazardous waste after November 18, 1980.

6. Gary is presently without sufficient knowledge to answer the allegations set forth in Finding No. 8, but admits that it was advised by Region V in 1982 that its interim status was not granted.

7. Gary denies the allegations set forth in Finding No. 9, but admits that its Part A application listed said types of waste as wastes which the facility might handle in the future.

8. Gary denies the material allegations set forth in Finding No. 10, but admits that:

- (a) During calendar year 1981, Gary received waste sludge from Jones & Laughlin Steel/Youngstown Sheet and Tube Company generated at its Indiana Harbor Works facility (EPA ID No. IND005462-601). On December 1, 1981, Region V of U. S. EPA advised J & L Steel that "U. S. EPA has

made a preliminary determination to publish in the Federal Register notice to exclude certain wastes generated at particular facilities from the list and 40 CFR Part 261, Subpart D," and advised the delisting determination included "a waste generated at the Jones & Laughlin Steel, Indiana Harbor Works facility in East Chicago, Indiana (EPA ID No. 005462601), which has an EPA Waste No. F006, wastewater treatment sludges from electroplating operations." Thus, the wastewater treatment sludges from J & L's Indiana Harbor Works facility disposed of at Gary in 1981 were delisted by EPA and do not constitute a RCRA hazardous waste.

Likewise, on July 6, 1982, the Technical Secretary of the Indiana Environmental Management, pursuant to the recommendation of the Board's staff, granted Jones & Laughlin a "Variance for Delisted Hazardous Wastes" regarding its wastewater treatment sludges pursuant to Indiana Code 13-7-7-6, and required only that "the waste material must go to a state permitted solid waste disposal facility." Subsequently, on February 18, 1983, the Indiana Environmental Management Board approved a Settlement Agreement and Recommended Agreed

Order in EMB Cause No. N-53 wherein the Board on behalf of the State continued to classify J & L Steel's sludges from its Indiana Harbor Works as "special wastes" rather than as RCRA hazardous wastes.

- (b) Between approximately January 6, 1981, and November 16, 1981, Gary received from Independent Waste approximately 33 shipments of paint sludge from American Chemical Service, Inc. Although given EPA hazardous waste ID No. F005 by the generator American, it advised Gary that this classification was being utilized due only to the sludge's ignitability. Each load of sludge was mixed with sand prior to disposal, rendering the waste no longer ignitable and no longer hazardous, as set forth at 40 CFR 265.281 and 40 CFR 265.312(a). Subsequent to mixture and disposal, American has advised and represented both to the State (ISBH) and to Gary that it erroneously used the number F005 to classify this waste during the year immediately following the effective date of RCRA, but instead it should have designated the waste as number D001.
- (c) Its former attorney John Kyle received a letter from Region V dated February 8, 1984, and this letter speculated as to the types of chemicals

which might be present in American's wastes and as to the classification of American's different waste streams. One of these waste streams was "D001"-Hazardous Waste exhibiting the characteristic of ignitability noted at 320 IAC 4.5-5-2(b). See 40 CFR 261.21.

- (d) During June, 1985, Gary's Vice President Larry Hagen advised an ISBH employee that Gary had accepted washed, broken battery casings and neutralized calcium sulfate material only from U.S. Lead, but that neither were hazardous wastes.

9. Gary admits the allegations contained in Finding No. 11.

10. Gary admits it did not submit a Part B application and did not certify compliance with RCRA ground-water monitoring and financial requirements by November 8, 1985, but denies the remainder of the allegations in Finding No. 12.

11. Gary admits that a representative of Harding Lawson & Associates performed a groundwater monitoring inspection at its facility during September, 1984. However, Gary has never received a report of said inspection and is without knowledge as to conclusions contained therein. Furthermore, Gary denies all other allegations set forth in Finding No. 13. Because Gary did not dispose of RCRA hazardous wastes after November 18, 1980, and because EPA did not issue Gary an interim status permit, neither

a ground-water monitoring program or system is required under the regulations set forth in the Findings.

Furthermore, Gary did install and has monitored quarterly four (4) groundwater wells at its facility pursuant to the requirements established by the Indiana Environmental Management Board by issuing Gary a construction permit on February 16, 1982, and also pursuant to the Settlement Agreement and Recommended Agreed Order in Cause No. N-53 approved by the IEMB on February 18, 1983.

12. Gary cannot locate and thus denies receiving a May 5, 1985 letter from the State (ISBH) regarding financial assurance for a hazardous waste facility, but it admits that it has not provided the State with hazardous waste facility certificates of liability insurance, but denies the remainder of the allegations and conclusions set forth in Finding No. 14.

13. Gary denies the various violations set forth in Finding No. 15, and also states that it has never received notice of said violations alleged to have existed one year ago on June 17, 1985.

14. Gary admits to receiving a letter dated March 29, 1985, from the State (ISBH) regarding proof of financial assurance and proof of liability coverage, but denies that the regulations referenced are applicable to its facility and denies that its facility lacked compliance.

15. Gary denies that its response letter of April 16, 1985, was inadequate, and denies that it was responding to the ISBH inspection report of June 17, 1985, discussed in Finding No. 15.

WHEREFORE, Gary Development Company, Inc. disputes, takes exception to, and objects to each and every section and all statements set forth in both the Order and the Assessment of Penalty sections of EPA's Complaint and Compliance Order dated May 30, 1986, and hereby requests an evidentiary hearing regarding said Complaint and Compliance Order and the Findings and conclusions set forth therein.

PARR, RICHEY, OBREMSKEY & MORTON

Attorneys for Gary Development
Company, Inc.

By


Warren D. Krebs

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Request for Hearing and Answer and Responsive Pleading to Complaint and Compliance Order upon Marc M. Radell, Office of Regional Counsel, U.S. Environmental Protection Agency, Region V, 320 South Dearborn Street, Chicago, Illinois 60604; by U. S. Mail, postage prepaid, this 30th day of June, 1986.


Warren D. Krebs

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